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**Presentment Date:** March 23, 2015

Time: 12:00 p.m.

**Objections Due:** March 20, 2015

**Hearing Date** (Only if necessary): \_\_\_\_\_

Time: \_\_\_\_\_

*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC  
and the estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Debtor.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

COHMAD SECURITIES CORPORATION, *et al.*,

Defendants.

Adv. Pro. No. 09-01305 (SMB)

**TRUSTEE'S MOTION TO ENLARGE TIME PURSUANT TO FED. R. BANKR. P.  
9006(b) TO SUBSTITUTE THE ESTATE OF PHYLLIS GUENZBURGER FOR JOINT  
TENANT PHYLLIS GUENZBURGER OF THE JOINT TENANCY OF PHYLLIS  
GUENZBURGER AND FABIAN GUENZBURGER, A PARTY TO THIS ACTION**

Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") and the substantively consolidated estate of Bernard L. Madoff ("Madoff") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* ("SIPA"), by his undersigned counsel, respectfully moves this Court pursuant to

Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (“Rule 9006(b)”) for an enlargement of time to substitute the Estate of Phyllis Guenzbuger for Phyllis Guenzbuger of The Joint Tenancy of Phyllis Guenzbuger and Fabian Guenzburger (“the Joint Tenancy”), a party to this action. Such substitution of parties is pursuant to Fed. R. Civ. P. 25 (“Rule 25”), made applicable to this adversary proceeding by Rule 7025 of the Federal Rules of Bankruptcy Procedure (“Rule 7025”).

### **INTRODUCTION AND BACKGROUND**

In 2009, the Trustee commenced this action against, among others, the Joint Tenancy. In December 2014, Phyllis Guenzbuger died in Switzerland. Counsel for the defendant filed a suggestion of death with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) on December 23, 2014 (Dkt. 308), giving the parties 90 days to substitute parties pursuant to Rule 25. Counsel further informed the Trustee that the Decedent’s estate has entered into probate in Switzerland but is unaware of additional details regarding the probate proceedings. The Trustee is currently working to uncover details of these probate proceedings in Switzerland; however, as of the date of this motion, it is unknown whether an administrator has been appointed in Switzerland, necessitating an enlargement of time to substitute the parties.

### **ARGUMENT**

Rule 9006(b)(1) provides:

When an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Fed. R. Bankr. P 9006(b)(1). Here, Rule 25, as made applicable to this adversary proceeding by Rule 7025, requires a motion for substitution of parties to be made within ninety days of the service of statement of death. Fed. R. Civ. P. 25(a)(1); *see* Fed. R. Bankr. P. 7025 (“Rule 25 F.R.Civ.P. applies in adversary proceedings.”). In this case, the 90-day period expires on March 23, 2015. Therefore, this motion is made “before the expiration of the period originally prescribed . . .” and is an “act [] required . . . to be done at or within a specified period . . .” Fed. R. Bankr. P. 9006(b)(1). Consequently, Rule 9006(b) permits this Court to enlarge time.

No known administrator has been issued in Phyllis Guenzbuger’s probate matter. Thus, the Trustee requests the enlargement of time to provide sufficient time for the Trustee to substitute proper parties in the action for the Joint Tenancy.

### **CONCLUSION**

Accordingly, for the reasons set forth above, the Trustee respectfully requests this Court order an enlargement of time to September 23, 2015 for the Trustee to substitute the Estate of Phyllis Guenzbuger for Phyllis Guenzbuger, who was a tenant of the Joint Tenancy, a party to this action.

Dated: New York, New York  
March 6, 2015

/s/ Oren J. Warshavsky  
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Liquidation of Bernard L. Madoff Investment  
Securities LLC and the estate of Bernard L.  
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